

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -1929 of 2021

Ghulam Mustafa Noonari

Versus

Province of Sindh and 03 others

Date of hearing & order : 19.03.2021

Mr. Muhammad Hanif Noonari, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through this constitutional petition, the petitioner has impugned the result announced by the Sindh Public Service Commission (SPSC) against 79 vacancies of male and female Agricultural Officers (BPS-17) in the Agriculture Department.

2. Per learned counsel the respondent-agriculture department appointed 75 successful candidates out of 79 vacancies vide press release dated 10.03.2021. He prays for direction to the respondents to consider his candidature against a leftover vacant post.

3. We asked the learned counsel as to how this petition is maintainable on the premise that he was declared unsuccessful candidates in the final interview conducted by the respondent-commission vide press release dated 10.03.2021 (page 75). He replied that when a sanctioned post was filled and four posts remained vacant he was/is entitled to be considered for appointment as he is fit and eligible to meet the criteria for the subject post.

4. Since, a pure question of law involved in the present proceedings is whether the petitioner not declared successful can be recommended for appointment against any vacancy occurring due to non-joining of any successful candidate or against the leftover vacancies.

5. Prima-facie, petitioner has never been recommended by SPSC for appointment against the post of agricultural officer BPS-17 by the SPSC vide press release dated 10.03.2021. Therefore, we are not persuaded by the arguments of the learned counsel for the petitioner on the aforesaid analogy.

6. In the circumstances of the case, we are of the considered view that the competent authority has the right to re-advertise the leftover posts. Therefore, in the facts and circumstances of this case, interference by this Court, at this stage, is uncalled for; and, to substitute our viewpoint. Primarily, our view is further cemented by the decision of the Hon'ble Supreme Court, rendered in the case of the Secretary Punjab Public Service Commission, Lahore and others v. Aamir Hayat and others, 2019 SCMR 124.

7. Adverting, to the question raised by the petitioner that he succeeded in the subject examination, thus vested right existed in their favor. This assertion is misconceived. Prima-facie, this petition is not maintainable for the simple reason that no recommendation had been issued in his favor, thus no vested right has accrued in favor of the petitioner. It is well-settled law that even a successful candidate does not acquire an indefeasible right to be appointed and that it could be legitimately denied as such no indulgence of this Court is required to declare unsuccessfully candidates as a successful candidate and direct the respondent to consider his candidature of this post. The jurisdiction of this Court under Article 199 of the Constitution is limited to the extent of ensuring that state functionaries do what they are required by law to do and refrain from doing what they are prohibited by law to do. Unless an act or omission of a state functionary falls within the above parameters, it is not liable to be interfered with.

8. For reasons recorded above, this petition is dismissed in limini with the cost of Rs.5, 000/.

9. These are the reasons for our short order dated 19.03.2021, whereby we have dismissed the captioned petition with the cost.

J U D G E

J U D G E

Shahzad*